

ESTTA Tracking number: **ESTTA259335**

Filing date: **01/07/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Travbuzz, Inc. d/b/a Palace Tours
Granted to Date of previous extension	01/07/2009
Address	20 Wall Street Princeton, NJ 08540 UNITED STATES
Party who filed Extension of time to oppose	Travbuzz, Inc.
Relationship to party who filed Extension of time to oppose	The purpose of the change is simply to add and indicate a d/b/a of the subject party that filed the extension.

Correspondence information	John M. Rannells Baker and Rannells PA 575 Route 28 Suite 102 Raritan, NJ 08869 UNITED STATES jmr@br-tmlaw.com, officeactions@br-tmlaw.com Phone:908-722-5640
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Applicant Information

Application No	77448792	Publication date	09/09/2008
Opposition Filing Date	01/07/2009	Opposition Period Ends	01/07/2009
Applicant	THE LUXURY HOLIDAYS, INC. 126 BANGOR LANE MILTON, DE 19968 UNITED STATES		

Goods/Services Affected by Opposition

Class 039. First Use: 2007/10/08 First Use In Commerce: 2007/10/08
All goods and services in the class are opposed, namely: ARRANGING TRAVEL TOURS; ARRANGING EXCURSIONS FOR TOURISTS; TRAVEL AGENCY SERVICES, NAMELY PROVIDING TOURIST INFORMATION CONCERNING TRAVEL

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THE GOLDEN CHARIOT		
Goods/Services	Arranging tours; arranging excursions for tourists; travel agency services, namely providing tourist information concerning travel.		

Attachments	77448792notice of opposition.pdf (8 pages)(353575 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/john rannells/
Name	John M. Rannells
Date	01/07/2009

**IN THE UNITED PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

-----X		
TravBuzz, Inc. d/b/a "Palace Tours",)	
)	
v.)	Mark: THE GOLDEN CHARIOT
)	
The Luxury Holidays, Inc.)	Ser. No. 77448792
)	
Applicant.)	
-----X		

NOTICE OF OPPOSITION

In the matter of trademark application Ser. No. 77/448792 for the mark THE GOLDEN CHARIOT ("Applicant's Mark") for "arranging tours; arranging excursions for tourists; travel agency services, namely providing tourist information concerning travel" in Int. Class 039, filed by The Luxury Holidays, Inc. ("Applicant") on April 15, 2008 and published for opposition on September 9, 2008 (the "Application"), the time to oppose having been extended, TravBuzz, Inc. d/b/a "Palace Tours" ("Opposer"), a corporation organized and existing under the laws of the State of New Jersey and located and doing business at 20 Wall Street, Princeton, New Jersey 08540, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 77/448792 and opposes the application under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13).

As grounds of opposition, it is alleged that:

1. Upon information and belief, THE GOLDEN CHARIOT is the name of a luxury train and train tour in the Karnataka State of India that is a joint venture of State Government of Karnataka and the Ministry of Railways, offered through the Karnataka State Tourism Development Corporation (“KSTDC”).

2. The Golden Chariot tours originate in Bangalore, India and travel by rail throughout the Indian State of Karnataka.

3. The KSTDC approves, on a non-exclusive basis, various travel agencies as general sales agents for The Golden Chariot tours.

4. The Opposer herein is an approved sales agent for The Golden Chariot tours which tours are run under authority of the KSTDC.

5. Upon information and belief, the Applicant is also an approved sales agent for The Golden Chariot tours, and the The Golden Chariot tours offered by the Applicant on Applicant’s website are the tours run under the authority of the KSTDC.

6. Upon information and belief, the mark and name THE GOLDEN CHARIOT are proprietary to the KSTDC and use of the mark and name, as well as use of photographs/pictures of the train and other promotional materials are granted, for promotional purposes, by permission of the KSTDC.

7. Opposer obtained from the KSTDC the right to use the mark and name THE GOLDEN CHARIOT as well as pictures of the THE GOLDEN CHARIOT train and other promotional materials.

8. In fact, one of the KSTDC photographs used by Opposer, by permission from the KSTDC, is identical to the picture/photograph (the “Photograph”) of the THE

GOLDEN CHARIOT train as is used by Applicant in promoting the referenced tours and said Photograph was submitted by Applicant in connection with its Application as part of its specimen.

9. Upon information and belief, the rights in the Photograph and rights in the mark and name THE GOLDEN CHARIOT as appears on the train are all owned by the KSTDC.

10. The specimen submitted by the Applicant with its application before the USPTO is comprised of the Photograph and some allegedly descriptive information about the tour.

11. Upon information and belief, the Applicant does not have exclusive rights to use the mark and name THE GOLDEN CHARIOT for the The Golden Chariot tours in Karnataka, India.

12. Upon information and belief, the Applicant's The Golden Chariot tours promoted on Applicant's website refer solely to the The Golden Chariot tours conducted in Karnataka, India and Applicant's alleged use of the mark and name THE GOLDEN CHARIOT simply refer to the referenced The Golden Chariot train and tours.

13. Upon information and belief, the Applicant has used the KSTDC mark and name, Photograph, and other KSTDC promotional materials and fraudulently claimed them as its own and has fraudulently based its trademark application upon a specimen bearing the mark owned by a third party.

**FIRST CLAIM FOR RELIEF
FRAUD ON THE TRADEMARK OFFICE**

14. Opposer incorporates herein by reference paragraphs 1 – 13 above as if fully set forth herein.

15. Upon information and belief, Ser. No. 77/448792 was filed and has been maintained by Applicant by Applicant's knowingly false or fraudulent statements, which statements made in the Application were made with the intent to induce authorized agents of the U.S. Patent and Trademark Office ("USPTO") to approve the Application and, reasonably relying upon the truth of said false statements, the USPTO did, in fact, approve said Application for publication.

16. Upon information and belief, the following statements made in the Declaration accompanying the Application are fraudulent: (1) that "he/she believes the applicant to be the owner of the trademark/service mark sought to be registered" and (2) that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce . . ."

17. Upon information and belief, the specimen (i.e., Photograph) submitted by Applicant with the Application constitutes trademark and/or service mark use of a third party and not that of Applicant, and that Applicant's claim that the specimen supports "use in commerce" by Applicant is a fraudulent statement.

18. Applicant is therefore not entitled to registration of its alleged mark, since Applicant committed fraud in the filing and maintenance of the subject Application, and said Application is therefore void.

19. Upon information and belief, the referenced false and fraudulent statements were made on the declarant's own knowledge and were made by a person who knew or should have known the same were false and fraudulent.

20. Opposer believes that it is being damaged by the Application in issue, namely Ser. No. 77/448792.

21. Issuance of a registration to the Applicant would create a cloud on Applicant's rights to use the mark and name THE GOLDEN CHARIOT in connection with arranging travel tours, arranging excursions for tourists, and travel agency services, namely providing tourist information concerning travel.

22. As a result of the fraud perpetrated on the United States Patent and Trademark Office the application sought to be cancelled continues to exist to the detriment of Opposer.

SECOND CLAIM FOR RELIEF
THE MARK IN ISSUE IS DESCRIPTIVE UNDER 15 U.S.C. §1052(E)(1)

23. Opposer incorporates herein by reference paragraphs 1 – 22 above as if fully set forth herein.

24. The term "The Golden Chariot" is describes the name of a luxury train and train tours in the Karnataka State of India that is a joint venture of State Government of Karnataka and the Ministry of Railways, offered through the Karnataka State Tourism Development Corporation ("KSTDC").

25. The use by Applicant of the term “The Golden Chariot” is descriptive of the KSTDC train and train tours, and Applicant’s use of the term on Applicant’s website refers exclusively to and describes said The Golden Chariot train and train tours.

26. The term in issue is used, (by permission of the KSTDC), by the Applicant, by Opposer, and by a number of other authorized third party tour agencies to refer to, describe, and promote the KSTDC train and train tours in Karnataka, India.

27. Applicant’s use of the term “The Golden Chariot” is merely descriptive of the KSTDC train and train tours in Karnataka, India.

28. Any potential use by Applicant of the term “The Golden Chariot” in connection with its travel agency services that do not describe, refer to, or promote the KSTDC train and train tours of Karnataka, India would be deceptively misdescriptive of the services.

29. Opposer believes that it is being damaged by the Application in issue, namely Ser. No. 77/448792.

30. Issuance of a registration to the Applicant would create a cloud on Applicant’s rights to use the mark and name THE GOLDEN CHARIOT in connection with arranging travel tours, arranging excursions for tourists, and travel agency services, namely providing tourist information concerning travel.

**THIRD CLAIM FOR RELIEF (ALTERNATIVE CLAIM)
PRIORITY AND LIKELIHOOD OF CONFUSION**

31. Opposer incorporates herein by reference paragraphs 1 – 30 above as if fully set forth herein.

32. As an alternative claim for relief – Upon information and belief, Opposer is now and has been, prior to any date which may be claimed by Applicant, engaged in promoting, offering and/or arranging tours; arranging excursions for tourists; travel agency services, namely providing tourist information concerning travel using the mark and name THE GOLDEN CHARIOT in commerce in connection with the stated services.

33. Opposer's use of the mark and name THE GOLDEN CHARIOT has been in continuous, open, and notorious use in the United States from a date prior to any date which may be lawfully claimed by Applicant.

34. Opposer believes that it is being damaged by the Application in issue, namely Ser. No. 77/448792.

35. Issuance of a registration to the Applicant would create a cloud on Applicant's rights to use the mark and name THE GOLDEN CHARIOT in connection with arranging travel tours, arranging excursions for tourists, and travel agency services, namely providing tourist information concerning travel.

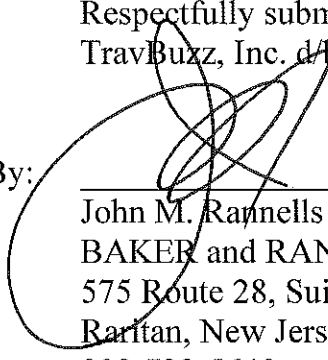
36. As an alternative claim, the concurrent use of the mark and name THE GOLDEN CHARIOT by Applicant is confusingly similar to Opposer's use of the mark when applied to the services of the parties.

37. As an alternative claim, since Opposer owns the mark THE GOLDEN CHARIOT by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

38. The registration of the mark THE GOLDEN CHARIOT to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's services are offered by, licensed by, controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

Respectfully submitted for Opposer
TravBuzz, Inc. d/b/a Palace Tours

By:



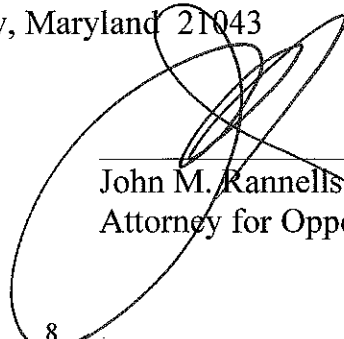
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Dated: January 7, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition, in re TravBuzz, Inc. d/b/a Palace Tours v. The Luxury Holidays, Inc. was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 7th day of January, 2009, to the Attorney of record for Applicant at the following address:

Morton J. Rosenberg, Esq.
Rosenberg, Klein & Lee
3458 Ellicott Center Drive – Suite 101
Ellicott City, Maryland 21043



John M. Rannells
Attorney for Opposer